

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,
Plaintiff,
v.

AMERISOURCEBERGEN DRUG
CORPORATION,¹ CARDINAL HEALTH
INC., MCKESSON CORPORATION, and
GREGORY DONALD CHANEY, M.D.,
Defendants.

Civil Action No. 3:17-cv-01362
Judge: Robert C. Chambers

**DEFENDANT AMERISOURCEBERGEN DRUG CORPORATION'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant AmerisourceBergen Drug Corporation ("ABDC"), pursuant to Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure, moves this Court for an order dismissing the Complaint² because it fails to state a claim on which relief may be granted. As grounds for this motion, ABDC states:

1. The Complaint does not pass muster under *Iqbal/Twombly*. Its allegations lack factual content and do not plausibly suggest wrongdoing by ABDC, let alone any that caused the opioid epidemic or the City's claimed damages. The Complaint does not allege any facts demonstrating any deficiency in ABDC's anti-diversion program (which in fact is effective and

¹ AmerisourceBergen Drug Corporation's name was misspelled by Plaintiff in the caption as AmerisourceBerger Drug Corporation.

² Plaintiff's Complaint was filed on January 19, 2017. On January 26, 2017, Plaintiff filed an Amended Complaint. The Amended Complaint added two new paragraphs to the original Complaint, as follows:

16. The Plaintiff affirmatively expresses that the City of Huntington is not seeking any relief in this action for the federal share of funding for the State Medical Program.
17. Claims for damages for any federal monies expended by the City of Huntington are hereby expressly disavowed.

To date, ABDC has not been served with the Amended Complaint. ABDC's arguments supporting dismissal of the original Complaint apply equally to the Amended Complaint.

robust). Nor does the Complaint allege any facts demonstrating that any pill ABDC distributed was “diverted” to an improper purpose rather than used for legitimate medical purposes or, indeed, that any pharmacy to which ABDC shipped ever diverted a single pill.

2. The Complaint’s allegations establish that ABDC’s lawful distribution of prescription products may not be deemed the proximate cause of the City’s costs of dealing with crime and other problems allegedly caused by opioid abuse.

3. The “free-public-services” doctrine bars the City from recovering expenditures made to provide public services and to perform its public duties to its citizens.

4. The City’s claims are barred by the economic loss rule.

5. To the extent the City’s claims are based on ABDC’s alleged noncompliance with the WVCSA or its regulations, no private right of action exists for such claims, nor does the City have authority to enforce them either directly or through a common-law negligence claim.

6. The City’s unjust enrichment claim fails on its face because the City does not, and cannot, allege that the City conferred any benefit on ABDC, which is one of the elements that West Virginia law requires for such a claim.

For these reasons, and for the reasons set forth in the accompanying Memorandum, the Court should enter an order under Rules 8(a) and 12(b)(6) dismissing the Complaint for failure to state a claim.

Dated: March 2, 2017

Respectfully submitted,

AMERISOURCEBERGEN DRUG CORPORATION

Eric W. Sitarchuk
(pro hac vice to be submitted)
eric.sitarchuk@morganlewis.com
Meredith S. Auten
(pro hac vice to be submitted)
meredith.auten@morganlewis.com
MORGAN LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5000

/s/ Alvin L. Emch, Esquire
Alvin L. Emch, Esquire (WVSB # 1125)
aemch@jacksonkelly.com
Adam J. Schwendeman (WVSB # 11989)
aschwendeman@jacksonkelly.com
JACKSON KELLY PLLC
500 Lee Street, East, Suite 1600
P.O. Box 553
Charleston, WV 25322
(304) 340-1000

Counsel for Defendant

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CERTIFICATE OF SERVICE

I, Alvin L. Emch, counsel for Defendant AmerisourceBergen Drug Corporation, do hereby certify that on March 2, 2017, I electronically filed the foregoing Motion to Dismiss Plaintiff's Amended Complaint ("Motion") with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the following:

Charles R. "Rusty" Webb
The Webb Law Centre, PLLC
716 Lee Street, East
Charleston, West Virginia
rusty@rustywebb.com

Enu Mainigi
F. Lane Heard, III
Steven M. Pyser
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

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James R. Wooley
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Elizabeth P. Kessler
Jones Day
325 John H. McConnell Blvd.
Columbus, OH 43215

Geoffrey Hobart
Matthew Benov
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001

Jeffrey M. Wakefield
Flaherty Sensabaugh Bonasso PLLC
200 Capitol Street
Charleston, WV 25338-3843

Robert H. Akers
Susan M. Robinson
Thomas Combs & Spann, PLLC
300 Summers Street, Suite 1380
Charleston WV 25301

/s/ Alvin L. Emch

Alvin L. Emch (WVSB # 1125)